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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	76293327
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Applied for Mark	SHIMMERING RAINFOREST
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**In The United States Patent & Trademark Office
For Before the Trademark Trial & Appeal Board**

NAME OF APPLICANT: Prema Jyothi Light

NAME OF TRADEMARK: **SHIMMERING RAINFOREST**

SERIAL NUMBER: 76293327

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DATE OF THIS APPEAL BRIEF: June 3, 2013

EXAMINING ATTORNEY: Linda Lavache, Esq., Law Office 106

APPLICANT'S APPEAL BRIEF

I. DESCRIPTION OF THE RECORD

This case is being submitted on the Record, as contained in TEAS, ESTTA, and whatever paper files may still exist from earlier years. There are no additional depositions, discovery or court documents to incorporate into the Record. However, there has been some serious mishandling of Applicant Light's documents and images, as detailed hereinbelow, in Issue # 14, and this is in need of immediate attention, as this affects the ability of the Examining Attorney and TTAB Judges to properly evaluate these cases. Therefore, Applicant Light got in touch with Teresa Stanek Rea, Director of the United States Patent & Trademark Office and Undersecretary of Commerce for Intellectual Property, and Deborah Cohn, Commissioner of Trademarks, asking for high-level assistance in resolving this otherwise-unresolved but serious problem. People further down the line were not doing anything to assist. As a result, Ms. Rea kindly referred the matter to Dawnmarie D. Sanok, Staff Attorney for the Office of the Commissioner for Trademarks (see EXHIBIT H.)

Applicant Light is grateful to Ms. Rea for her kind intervention in this matter, and will keep Ms. Rea apprised of the progress of, and handling of, this review.

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IV. EXHIBIT LIST

EXHIBIT A: Trademark in black-&-white, with same elements and design as originally submitted (same as larger Drawing 01, EXHIBIT D), in comparison with Trademark in black-&-white, with minor typos corrected (same as larger Drawing 02, EXHIBIT D), showing that these two convey the same Commercial Impression, as essentially the same Trademark.	EX-001
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EXHIBIT LIST *(continued)*

EXHIBIT B:	Trademark (01 in EXHIBIT D) in black-&-white, with same elements and design as originally submitted, and the same Trademark in colors (03 in EXHIBIT D), showing that these two versions clearly, essentially convey the same Commercial Impression, of being the same Trademark.	EX-002
EXHIBIT C:	Trademark in colors, but with same black calligraphy and verbal elements as originally submitted (03 in EXHIBIT D) in comparison with Trademark in colors, but with minor typos corrected (04 in EXHIBIT D), showing that the two versions clearly convey essentially the same Commercial Impression.	EX-003
EXHIBIT D:	Four Drawing Pages: 01 (black-&-white, same elements and design as originally submitted); 02 (black-&-white, with minor typos corrected); 03 (in colors, but with same calligraphy, verbal elements and design as originally submitted); 04 (in colors, but with minor typos corrected).	EX-004
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V. STATEMENT OF THE ISSUES

1. It was a procedural error for the TTAB to refuse to grant Applicant's REQUEST FOR REMAND, which she filed on 03-28-13, so that outstanding New Issues could be resolved between the Examining Attorney and Applicant, to a higher degree of finish, before resuming review by the TTAB. This abrogated the Applicant's fair and lawful opportunity to respond to the Examining Attorney's objections, as provided for by the TMEP. Therefore, if submission of additional Specimens is necessary, for Applicant to respond to such objections, then these should at least be allowed and reviewed by the TTAB, in the light of the Issues and Arguments hereinbelow-described.
2. The Specimens submitted by Applicant in conjunction with her RESPONSES TO OFFICE ACTION filed 01-28-13 are NOT printer's proofs; they are leaflets used in commerce.
3. The Specimen submitted by Applicant in conjunction with her RESPONSE TO OFFICE ACTION filed 01-28-13, were copyright-dated in 2004 in support of Applicant's U.S.C. §1052(f) claim of Acquired Distinctiveness. Accompanying this APPEAL BRIEF is also a Specimen dated 2004, to demonstrate use of the Trademark dating back five years before the claim of Acquired Distinctiveness was made, in 2009
4. There is a long-standing, continuing problem with a lot of typographic errors made by USPTO typists, in their retyping of verbal elements in these Trademarks for the online listings in TSDR and TESS. The total number of USPTO typographical errors has now risen from TWENTY-SEVEN (27) to FORTY-TWO (42) for both Trademarks combined (as listed and discussed in ARGUMENTS section). (So, if these DOZENS of errors made by USPTO typists can be corrected, the corrections requested due to errors made by Applicant's typists should be allowed too!)
5. In listing all of the verbal elements in this Trademark online, all of the words have been run together in a great big blob, which is not how they appear in the Trademark. This needlessly creates confusion, adversely affects TESS searches, and has resulted in a misrepresentation of the Trademark to the public.
6. Applicant is asking to be allowed to correct some minor typographical errors in the Trademark as originally submitted. Both the uncorrected and corrected versions of the Trademark convey the same essential commercial impression, and both versions are perceived by the public as being essentially the same Trademark.
7. The Examining Attorneys have already assigned completely incorrect Design Codes to this Trademark, These Design Codes have never corresponded to the Trademarks, even as originally submitted. This needs to be
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Shimmering Rainforest, Serial # 76293327

corrected, as any searches based upon them would be invalid. Applicant did not notice this before, and requests immediate correction of this clear error. New Design Codes need to be assigned to the Trademark, even to make them accurate to the Trademark as originally submitted.

8. Applicant has requested permission to amend her black-&-white drawing to a color drawing, and this is still her preference. Normally this should be no problem, in the light of TMEP § 807.14(e)(i), as obviously the two Trademarks are the same (see EXHIBITS A, B & C). Also, the color version was described earlier, in the TTAB Appeal Brief filed 05-30-2006.

9. In the alternative, if the TTAB is not willing to allow her to register her Trademark in a color version, which has been in use since before the original Trademark application date, as evidenced by the accompanying Specimens (see EXHIBITS L & N), Applicant can accept registration of her Trademark in its black-&-white version. As to Specimens, a Trademark submitted in black-&-white does not have to be used in black-&-white only. Therefore, the use of the Trademark in color, on the accompanying Specimens, does not invalidate the Specimens, even for the black-&-white Trademark.

10. Applicant's Specimens all clearly show that each Trademark is a Unitary mark which, in its Entirety, does convey a unique, easily recognizable, Unitary Commercial Impression, within the meaning of TMEP § 1213.05, and therefore can, its Entirety, serve as a Source Indicator for Applicant's goods.

11. Applicant is submitting three Specimens which show the use of the Trademark in commerce, functioning as Trademarks and Source Indicators for Applicant's goods, distinguishing them from the goods of others.

12. Applicant is submitting four Drawing Pages which accompany this BRIEF (see EXHIBIT D). These include: Drawing 01 (black-&-white, same elements and design as originally submitted); Drawing 02 (black-&-white, with minor typos corrected); Drawing 03 (in colors, but with same calligraphy, verbal elements and design as originally submitted); Drawing 04 (in colors, but with minor typos corrected). Drawing 04 is preferred by Applicant, but it should be clear, from reviewing them, that all of them recognizably portray the same Trademark.

13. The Specimens submitted by Applicant clearly show that the Trademarks are in use as Trademarks, and do function as Source Indicators for Source of Applicants goods, to distinguish them from the goods of others.

14. There has been some flagrant mishandling of Applicant's documents and images by USPTO staff, in uploading her documents and images onto TSDR. This is in need of prompt correction because this has affected the

ability of the Examining Attorney and TTAB judges to evaluate her documents and images. With assistance of kind referrals from Teresa Stanak Rea, Director of the USPTO and Undersecretary of Commerce for Intellectual Property, this mishandling is coming under review by Dawnmarie Sanok, Staff Attorney for the Office of the Commissioner of Trademarks, but TTAB attention to this is also needed.

15. The USPTO earlier claim of “multiple marks”, as a possible barrier to registration of these Trademarks, has been withdrawn. The remaining issue of “whether the Trademark functions as a Trademark, and as a Source Indicator for Applicant’s goods”, with unitary and distinctive commercial impression, has been resolved by the clear usage of Applicant’s Trademarks as Trademarks, as evidenced by her Specimens. Therefore, there are no real, substantial or valid remaining barriers to registration of these Trademarks.

16. Applicant has steadfastly maintained, throughout all these twelve long years that her applications for Trademark registration have been pending in the USPTO, that these Trademarks are inherently registrable. However, in the alternative, she states that her Trademarks have also Acquired Distinctiveness, as they have been in her continuous and exclusive use for way more than the requisite number of years for a U.S.C. §1052(f) claim, as evidenced by the accompanying Specimens. However, she made this U.S.C. §1052(f) claim, in the alternative, much earlier in the case, in 2009. As the case now stands, the U.S.C. §1052(f) claim should no longer be at all necessary, as the only real question which remains as a possible barrier to registration, in Examining Attorney Lavache’s Final Office Action dated 03-09-13, is whether the Trademark is used as a Trademark and serves as a Source Indicator to distinguish Applicant’s goods from others. This issue is beautifully resolved by reviewing the Trademark’s use on the accompanying Specimens.

17. Applicant Light also requests that the TTAB rule upon the issue of violation of Petition Fee requirements by the Petitions Office, who required \$200 from Petitioner Light for a single Petition to Revive her Trademarks. The Fee as outlined in the TMEP and federal law is per petition, not per Trademark, and there is no prohibition on filing one petition for two Trademarks. Thoughtful review is needed by the TTAB, for the sake of other applicants as well, so that the laws on fees, as they currently stand, are respectfully applied and observed.

18. These Trademark applications have been pending within the USPTO for twelve (12) years, which makes them very, very, VERY long-standing cases, and her Trademarks have been in use the entire time. After putting Applicant Light through hoops for all these years, during which -- despite experiencing car accidents in

which she nearly died, resulting in serious injuries and surgeries, and despite all difficulties, including death threats from violent neighbors intent upon plagiarizing all of her creative works for wrongful monetary gain on their part, she has steadfastly and bravely kept up with the required stream of ping-pong responsive papers, as a struggling *pro se* litigant, through thick and thin, because she sincerely believes in what she is doing. The least the TTAB could do for her, would be to at least, and at long last, grant registration to her very distinctive and beautiful, long-standing and long-in-use, Trademarks. Twelve years is a very, very, VERY long time for pending Trademark applications, and Applicant is hoping that her Trademarks will finally, at long last, after twelve long years, be granted registration.

VI. STATEMENT OF FACTS & BACKGROUND FOR CASE

1. **These Trademark applications have been pending for a whopping twelve (12) years, within the USPTO, which makes them very, very, VERY long-standing cases.** Her Trademarks have been in continuous use during this time period. But, during this time period, the USPTO has put Applicant through the necessity of filing dozens of responsive papers, for years and years and years. As she does not have an attorney, she has had to do all of the research and writing of these papers by herself. This has all been a very serious undertaking for a humbly-circumstanced, non-attorney, *pro-se* litigant, recovering from serious car crash injuries.

To submit one document to the TTAB (dated June 27, 2006), after she was injured in auto accidents, when she did not have access to a working computer, she had to hand-write out the entire filing on lined notebook paper, even though her hands were injured from the accidents at this time, and even sitting up to write was difficult.

2. **Applicant only undertook this overall monumental undertaking because she has sincerely believed in what she is doing.** This includes the following:

1) Trying to make the world a better place, a little bit brighter, more caring, more beautiful, more fun, and a happier place for children to live, play and be happy. As she does not have children of her own, she has seriously taken to heart a line by Robert Frost, who said, “There is only one Child, and his name is All Children.” For several decades, she has sincerely tried to beautifully serve the children of this world.

2) She has lovingly labored to create, write and illustrate numerous beautiful, humorous and fun storybooks, art books and playbooks for children, and has received delighted feedback from the children and their parents.

3) She has been a long-time, faithful disciple of the beautiful, saintly Guru from India, Sri Gurudev Swami

Satchidanandaji Maharaj (for over 35 years), who has been a leader in the worldwide ecumenical movement (for greater harmony among the different religions of the world). She has also seriously tried to put into practice the teachings of her beautiful and adored Sri Gurudev, by making her cast of storybook and cartoon characters a multi-racial and multi-religious one. Her people characters are white, black, latino, asian, Indian, native American Indian, Italian, Scottish, Irish, and people of all ages, religions, and both genders! The idea is to portray them all as getting along together harmoniously – to help encourage people to do exactly that!

4) As a longtime vegan vegetarian, she also has had a very long-standing sympathy for animals, wildlife, and environmental issues, and her creative SHIMMERING RAINFOREST storybooks, with fun animal characters, have tried to encourage greater kindness to animals, and preservation of their natural environments and habitats.

5) After all these years, and after putting her through all these hoops (just a figure of speech, as she is still on crutches from her auto accidents!), it is her humble hope that the TTAB will finally, at least and at long last, grant her registration of her beautiful, colorful, long-standing and long-in-use, Trademarks!

VII. ARGUMENTS

1. It was a procedural error for the TTAB to refuse to grant Applicant's REQUEST FOR REMAND, which she filed on 03-28-13, so that outstanding New Issues could be resolved between the Examining Attorney and Applicant, to a higher degree of finish, before resuming review by the TTAB for this case. This lawful REQUEST FOR REMAND was well-supported by citation to the TMEP. TMEP § 714.03 calls for non-final Office Action with a six-month response time, in response to unresolved New Issues which have arisen in a case.

Further, TMEP § 714.05(a) states:

“If the applicant submits an amendment that is not offered in response to a refusal or requirement, and the amendment is not acceptable, the examining attorney generally must issue a new nonfinal action with a six-month response clause, addressing the issues raised by the amendment and continuing all other refusals and requirements. The following are examples of amendments that would require a new nonfinal action: (1) Amendments to the drawing, unless the examining attorney had previously required that the drawing be amended or the amendment is acceptable and does not raise other issues.”

a. One New Issue (not addressed by the TTAB in its Order dated 04-05-13) was the requested correction of some inadvertent typographic errors made by typists for Applicant Light in the finer print of the Trademark, as requested by Applicant which do not alter the basic commercial impression of the Trademark.

b. Another New Issue was the use of the Trademark in color, as well as in black-and-white. This was a New Issue, completely different from other previous, amended drawings from years ago, amended for different reasons, in black-&-white. In her RESPONSE TO OFFICE ACTION, Applicant Light was submitting Specimens showing the Trademark in use, in colors, 1) functioning as Trademarks, 2) serving as Source Indicators for Applicant's goods, and 3) also in support of a claim of Acquired Distinctiveness.

c. Therefore, Applicant Light should have been allowed to respond to the Examining Attorney's objections to these New Issues before the resumption of this TTAB Appeal. Other applicants are routinely allowed to respond to an Examining Attorney's responses to New Issues. In all fairness, Applicant Light should have been allowed this too. This is traditionally provided for by due process, under TMEP § 714.03. To fail to allow Applicant Light to do so, was to abrogate the Applicant's opportunity to respond. Please see the REQUEST FOR REMAND, which is incorporated herein by reference, in its entirety.

d. Therefore, if submission of additional Specimens is necessary, for Applicant to respond to the Examining Attorney's objections in the present document, then these should at least be allowed and reviewed by the TTAB, in the light of the herein-described and herein-argued Issues.

2. The Specimens submitted by Applicant in conjunction with her RESPONSES TO OFFICE ACTION filed 01-28-13 are NOT printer's proofs; they are leaflets used in commerce. This was an incorrect "guess" by the Examining Attorney. The format in which they were filed was simply for the purpose of showing the relationship between the pages, and keeping all four pages of each leaflet firmly welded together, because Applicant's pages have been previously mishandled by staff at the USPTO. Displaying 4 pages of the Specimen together is nowhere forbidden in the TMEP or federal law. Applicant created a rectangle for the four pages of the leaflet, especially for this TEAS filing. Applicant has not used any external printers for her leaflets and has no need of printer's proofs.

The Examining Attorney cites the case of *In re The Signal Cos.*, 228 USPQ 956, 957-58 (TTAB 1986); and TMEP §§ 904.04a, 90407(a), to support her contention that printers proofs do not show use of the mark in commerce. However, the Specimens submitted by Applicant in support of her RESPONSE TO OFFICE ACTION, filed 01-28-13, ARE NOT PRINTERS PROOFS. So, these citations are not on point for this case.

These Specimens do depict the leaflets which are used in commerce. However, alternatively, in response to this incorrect "guess" by the Examining Attorney, Applicant is hereby submitting the Specimens which accompany

this BRIEF in a different format, with the pages displayed separately, instead of putting them together on one page.

3. The Specimen submitted by Applicant in conjunction with her RESPONSE TO OFFICE ACTION filed 01-28-13, were copyright-dated in 2004, in support of Applicant's U.S.C. §1052(f) claim of Acquired Distinctiveness. Accompanying this APPEAL BRIEF is also a Specimen dated 2004, to demonstrate use of the Trademark dating back five years before the claim of Acquired Distinctiveness was made in 2009, as stated in TMEP § 1212.05, although the Trademark has been in use since before the date of the original application in 2001 (see EXHIBIT J).

4. There is a long-standing, continuing problem with a lot of typographic errors made by USPTO typists, in their retyping of verbal elements in these two sister Trademarks for the online listings, which has affected and continues to affect any searches done in TESS. The total number of the typographical errors made by employees of the USPTO has now risen to FORTY-TWO (42) for both Trademarks combined. In addition to the TWENTY-SEVEN (27) corrections requested in the RESPONSE TO OFFICE ACTION filed 01-28-13, TEN (10) more errors need to be corrected for SHIMMERING RAINFOREST, and FIVE (5) more for SHIMMERING BALLERINAS & DANCERS. Of these 15 additional errors, some were previously made by USPTO typists but not caught, and some are NEW mistakes made while making the previously requested corrections.

However, it is clear that USPTO typists have made -- unusually -- DOZENS of typos, all over the place, in their mis-typing of the listings of the verbal elements of two small Trademarks. This has misrepresented these Trademarks to the public, for TESS searches. This is serious, and they should have to correct this.

When Applicant originally applied for Trademark Registration in 2001, applicants were not required to type in all the verbal elements separately on the applications. At some point in time, USPTO typists retyped all of the verbal elements for the online listings. Anyone can make a typing error, but -- FORTY-TWO (42) typos made by USPTO typists in two little Trademarks? Have you ever heard of this happening before, in the USPTO?

In her FINAL OFFICE ACTION, the Examining Attorney stated,

“The examining attorney thanks the applicant for bringing these typographical errors to the Office’s attention. The examining attorney has made corrections pursuant to the list of “USPTO Typographical Errors” supplied by applicant, after comparing applicant’s proposed corrections with the literal elements shown in the original mark drawing.”

However, more mistakes were recently made even while “correcting” the previous mistakes. Fifteen(15) more

corrections are now needed to USPTO errors, to make the online listings accurate to the original drawings.

A fanciful term “ROYAL "ROY" THE BABY ELEGANT ADORADEER”, as set forth in the original Trademark filed by Applicant, had been rendered by USPTO typists as “ROYAL "ROY" THE BABY ELEPGANT ADORABEDEET” in the online listings. This was not just a one-letter typo, but a four-letter typo, which was then “corrected” by the Examining Attorney Lavache herself to the incorrect “ROYAL "ROY" THE BABY ELEPHANT ADORADEER”. Yet this fanciful term refers to a character who is not an elephant, but a deer -- he is “ELEGANT”, not an “ELEPHANT” (see #5 below and EXHIBIT N). And, another line was newly typed in twice by the Examining Attorney, so the duplicate line has to be deleted (see #7 below). Upon even more careful proofreading, Applicant found another eight errors made earlier by USPTO typists in this one Trademark alone, including leaving out an entire fanciful term (see #1 below). (Also see other APPEAL BRIEF for SHIMMERING BALLERINAS.)

If this many errors can be made, forgiven and corrected, by USPTO typists, at least some of the corrections of typographical errors requested, due to errors made by Applicant’s typists, should be allowed too!

Supervisory attention is badly needed for this matter. The TEN (10) corrections which remain to be made by the USPTO in the online listing of verbal elements for SHIMMERING RAINFOREST, are listed below:

- 1) The following entire fanciful term from the original Trademark has been completely omitted by USPTO typists, and needs to be added back in: “DAFFA-DILLY-DOO FELLAROO” (Older USPTO mistake, newly caught.)
- 2) The following typo “LISTENTOMORE BUNNYRABBIT” should instead be: “LISTENMORE BUNNYRABBIT”. (Older USPTO mistake, newly caught.)
- 3) The following typo “LISTEN TOTTHIS BUNNYRABBIT” should instead be “LISTENTOTTHIS BUNNYRABBIT”. (No space between “LISTEN” and “TO”.) (Older USPTO mistake, newly caught.)
- 4) The following typo “LISTEN TOMETOO BUNNYRABBIT” should instead be: “LISTENTOMETOO BUNNYRABBIT”. (No space between “LISTEN” and “TOMETOO”.) (Older USPTO mistake, newly caught.)
- 5) The following entry has typos. It is not “ROYAL "ROY" THE BABY ELEPHANT ADORADEER”. The correct entry is: “ROYAL "ROY" THE BABY ELEGANT ADORADEER”.
- 6) The following typo “LASHANA & LASHANO THE SKY BLUE WARBLEROOS” should instead be: “SKY-BLUE WARBLEROOS”. (Add hyphen.) (Older USPTO mistake, newly caught.)
- 7) The following line was newly typed twice, so one repetition of the line should be omitted: “KWIZZLE-KOO-LOO-DOOS & KWIZZLE-KWOOS”. (This new mistake was made while correcting a different requested correction to this entry.)
- 8) The following typo “MIZZLE MOOS” should instead be: “MIZZLE-MOOS”. (Add hyphen.) (Older USPTO mistake, newly caught.)
- 9) The following typo “QUIZZLE-KOOS & RIZZLE-ROOS-LOOS” should instead be: “QUIZZLE-KOOS & RIZZLE-ROO-LOOS”. (Older USPTO mistake, newly caught.)
- 10) The following typo “TWIZZLE-DIZZLE-HIZZLE-FIZZLE-GIZZLE MIZZLE-BIZZLE-ZIZZLES” should instead be: “TWIZZLE-DIZZLE-HIZZLE-FIZZLE-GIZZLE-MIZZLE-BIZZLE-ZIZZLES”. (Hyphen needed between “GIZZLE” and “MIZZLE”.) (Older USPTO mistake, newly caught.)

The Examining Attorney also states, in her FINAL OFFICE ACTION, that “applicant is advised that the

original mark drawing, not the literal element field, controls for purposes of determining what constitutes the applied-for mark.” But then why have a literal listing at all? If there is a literal listing, it should be honest and accurate, as this affects searches by the public on TESS. Anyone can make an accidental typo, but these should be corrected. All of the FORTY-TWO (42) mistakes by the USPTO typists should be corrected.

5. In listing all of the verbal elements in this Trademark online, all of the words have been run together in a great big blob, which is not how they appear in the Trademark. This needlessly creates confusion, adversely affects TESS searches, and has resulted in a misrepresentation of the Trademark to the public. In her RESPONSE TO OFFICE ACTION, Applicant Light requested that each verbal phrase appear in a separate line, to clarify which words group together as phrases. In her FINAL OFFICE ACTION, the he Examining Attorney states, “Unfortunately, applicant’s request cannot be accommodated.” Yet – of course it can. Alternatively, a semicolon could be placed between character names or word groups, which would save space, while accomplishing the same goal. All it takes is a commitment to clean, honest clarity, on the part of the USPTO. This error needs to be corrected, for the sake of clarity and accuracy.

6. Applicant is asking to be allowed to correct some minor typographical errors in the Trademark as originally submitted. At an earlier time, she had her Trademarks re-typed in different software, by typists who made mistakes without her realizing it. So some publications have been printed with the Trademarks containing errors. But, both the uncorrected and corrected versions of the Trademark convey the same essential commercial impression, and both versions are perceived by the public as being essentially the same Trademark. (See EXHIBITS A, B & C.) The corrections requested are listed hereinbelow.

- a) At the bottom of the second column of finer type, AYOKA, THE FLUFFA-FAFFAFOO goes on one
- b) line, and FRANZ & FRANCINE, THE RAFFRETTALOEES goes on the next line. The typist didn’t hit the ENTER key and accidentally ran part of the two lines together, resulting in “AYOKA, THE FLUFFA-FAFFAFOOFRANZ &” on one line, and “FRANCINE, THE RAFFRETTALOEES” on the next line. This is obviously just a typo. FRANZ and FRANCINE are a pair of giraffes (see EXHIBIT B), whereas AYOKA is a bird. This is easily corrected by just putting FRANZ on the same line as FRANCINE. The difference is what used to be called a “carriage return”, or hitting the “enter” key.
- c) LISTEN TOT THAT BUNNYRABBIT should have been typed LISTENTOT THAT BUNNYRABBIT, the difference being an accidental space between LISTEN and TO.
- d) GLORIOUS GLORIETTA GLISSANDO was accidentally typed twice, so at least the second duplication can be deleted.
- e) For TIARA THE RAINFOREST JEWELBIRD, “JEWELBIRD” is supposed to be one word, not two (JEWEL BIRD). The difference is an accidental space between JEWEL and BIRD.
- f) When the typist typed GLORIOUS GLORIETTA GLISSANDO twice, four lines under the first, it was instead of the similar-sounding ADORIOUS ADORIETTA GLISSANDO (a sister character to GLORIETTA). The difference was just a two-letter typo – “AD” instead of “GL”.

- g) The last set of verbal elements in the Trademark, at the end of the third column is a cascade of similar-sounding fanciful terms, which rhyme with one another, with the following typographical corrections: KWIZZLE-KOOS typed twice, so one is deleted and replaced with the correct ZIZZLE-ZOOS; entry of TWIZZLE-DIZZLE-HIZZLE-FIZZLE-GIZZLE-MIZZLE-BIZZLE-ZIZZLES is corrected to TWIZZLE-DIZZLE-HIZZLE-FIZZLE-GIZZLE-MIZZLE-BIZZLE-ZIZZLE-ZAZZLES (last word had inadvertently been left off); incorrect QUIZZLE-KOOS corrected to QUIZZLE-QUOOS; TWIZZLE-TIZZLES & ZIZZLE-ZAZZLE-DAZZLES is the correct line, fourth from the bottom, where the typist inadvertently missed the second term; she also inadvertently typed TWIZZLE-TIZZLES twice, so the duplicate entry is deleted and replaced with the correct TWIZZLE-ZAZZLES. It probably all sounded the same to her.

The words are all fanciful terms, not usual words, or anything you could look up in a dictionary.

Most importantly, correction of these inadvertent typos by a tired little typist does not at all change the overall commercial impression of the Trademark at all (please see EXHIBIT A). As anyone of normal intelligence can easily see, the overall commercial impressions of the two versions of the Trademark are the same.

In support of these requests, in *In re Larios*, 35 USPQ2d 1214 (TTAB 1995), a change to “VINO DE MALAGA LARIOS” was ruled to be not a material alteration of “GRAN VINO MALAGA LARIOS”. Since the overall design and overall commercial impression of the Trademark in both versions were essentially the same, the change of words was allowed.

Another supporting case is *In re Innovative Companies, LLC*, 88 USPQ2d 1095 (TTAB 2008), in which amendment from “FREEDOMSTONE” to “FREEDOM STONE” held not a material alteration).

Another supporting case is *Paris Glove of Canada, Ltd. v. SBC/Sportco Corp.*, 84 USPQ2d 1856, 1862 (TTAB 2007), in which AQUASTOP on one (curved) line was held to be similar enough to AQUA and STOP on two horizontal line, so that this was not deemed to be a material alteration.

Please look at EXHIBITS A, B & C, and the Specimens. The uncorrected and corrected versions of the Trademark create essentially the same commercial impression, and are perceived by the public as the same Trademark. TMEP § 807.14 states, “The modified mark must contain what is the essence of the original mark, and the new form must create the impression of being essentially the same mark.” The corrected Trademark still contains the essence of the original mark, and does create the impression of being essentially the same Trademark.

The Examining Attorney cites the case of *In re Who? Vision Sys., Inc.*, 57 USPQ2d 1211 (TTAB 2000) (holding the proposed amendment of TACILESENSE to TACTILESENSE to be material alteration). However, this was a change in the principal element of the Trademark. In the present case, the principal elements of the Trademark remain exactly the same. Therefore, this citation is not on point for this case.

The Examining Attorney also cites *In re CTB Inc.*, 52 USPQ2d 1471 (TTAB 1999) (holding proposed amendment of TURBO and design to typed word TURBO to be material alteration). However, in the present case, Applicant is not amending the main words in her Trademark, and certainly not amending the main words and design to a typed word, so this citation is not on point for this case.

The Examining Attorney also cites *In re Dillard Department Stores, Inc.*, 33 USPQ2d 1052 (Comm'r Pats. 1993), in support of her contention that deletion of matter from the mark can result in a material alteration. However, this does not include deletion of accidental duplication of words as typing errors. It is also a Patent case, not a Trademark case, and therefore is not precedent-setting for the TTAB.

7. The Examining Attorneys have already assigned completely incorrect Design Codes to this Trademark. Applicant did not notice this before, and requests immediate correction of this clear error. New Design Codes need to be assigned to the Trademark, even to make them accurate to the Trademark as originally submitted. The present Design Codes have never corresponded to the Trademarks, and any searches based upon them would be invalid.

The current Design Search Code for this Trademark in TESS, created by the first Examining Attorney on this case, says, "Plain single line rectangles; Rectangles (single line)". Yet this is not at all true. This Trademark is clearly NOT a single line. This has never been an accurate description of the Trademark. Even the calligraphy for SHIMMERING RAINFOREST CHARACTER COLLECTION is on three lines, and there is a large listing of additional verbal elements in the Trademark, included on the same page as the Design Codes, in both TESS and in TSDR. This Trademark includes hand-done original calligraphy, and three wide vertical "stripes" of word-art, each of which contain small horizontal "stripes" of word-art, as lines of type, in an overall "flag" design. This Trademark simply does NOT just contain a single line in a rectangle. If a "Rectangle" is deemed to be the design code, this should include everything in the rectangle, including the entire Trademark as claimed by the Applicant.

Please note that in earlier documents to the USPTO, Applicant has previously referred to the color design of this Trademark as a "stars and stripes flag design". Please see TTAB Appeal Brief, filed 05-30-2006, page 7:

"C. Advantages of the columnar or flag design (Original Drawing). In its columnar design, the Trademark has an effect like a flag with stripes. This does create a uniform commercial impression. Please see the color Exhibits for this Brief, sent under separate cover. The flag-like impression is very clearly seen in color. ... 1. **The American flag needs both the Stars & Stripes!** Think of the American flag, our blessed Stars & Stripes. What if our government wanted to trademark the American flag. Would the TTAB require all the stripes to be removed? And just allow the government to have the square with the stars? Would this be a fair ruling? "Sorry – you cannot have both the Stars & Stripes. You can only have the Stars. The Stripes must go!" Think of how disappointed the American people would be! Old Glory, with just the

stars! My Trademark needs all of its little stripes, too! ... 3. The columnar or flag design is easy to read. It is easy to read the columnar design, both in black-&-white and in color. 4. This Trademark, in its columnar or flag design, is art. It creates a uniform commercial impression, recognizable at a glance.”

Further, on page 12 of the same APPEAL BRIEF:

“And, as it so happens, all the stars in the sky together make a beautiful shining sky. The impact they make together is different than seeing each star as a single star. A skyful of shining stars has a unified impression all its own. ... **A Trademark can be one beautiful rose, or a big bouquet of roses.** Either way, the Trademark is distinctive. You would not toss out a Trademark that was a bouquet of roses, just because it contains more than one rose. A bouquet, too, can be singular in its impression.”

The color version of this Trademark has colors in the background, but the foreground is the exact same black calligraphy, design, and arrangement of verbal elements as the black-and-white versions. The overall, essential, and recognizable Commercial Impression of the uncorrected and corrected, black-and-white and color versions of this Trademark, is that they are all recognizably the same Trademark.

8. Applicant has requested permission to amend her black-&-white drawing to a color drawing, and this is still her preference. Normally this should be no problem, as obviously the Trademarks are the same Trademark, whether in black-&-white, or in color (see EXHIBIT B). TMEP § 807.14(e)(i), states,

“If a mark is initially depicted in a black-&-white special form drawing in which no color is claimed, the drawing is presumed to contemplate the use of the mark in any color, **without limitation.**” [*Emphasis added.*]

a. Examining Attorney complained that this would require adding Design Codes. However, as described hereinabove, in Issue # 2, the Examining Attorneys have already assigned completely incorrect Design Codes to the Trademark, so new Design Codes will have to be added and possibly searched anyway, in order to be accurate, even to be true to the black-&-white version of this Trademark. The Trademark with its black calligraphy and type, with color background, is clearly just as unique as the black-&-white version.

b. TMEP § 807.14 states:

“ The modified mark must contain what is the essence of the original mark, and the new form must create the impression of being essentially the same mark.” And, “However, while the question of whether a new search would be required is a factor to be considered in deciding whether an amendment would materially alter a mark, it is not necessarily the determining factor.” And, “The controlling question is always whether the old and new forms of the mark create essentially the same commercial impression.”

c. According to TMEP § 807.14(e)(ii), regarding Design Marks, “In general, the addition, deletion, or amendment of color features in a design mark does not result in a material alteration of the mark.”

d. It is clear from EXHIBITS A & B that with the black-&-white versions of the Trademark,

the original version, the version with minor typos corrected, and the version with all typos corrected, all create the same overall commercial impression, and that all are the clearly still the same Trademark.

e. It is clear from EXHIBIT C that the black-&-white version of the Trademark and the color version of the Trademark, are still clearly the same Trademark and Source Indicator for Applicant's goods.

f. It is clear from EXHIBIT C that the color version of the Trademark with no typos corrected, and the color version of the Trademark with all typos corrected, both have the same commercial impression, as the same Trademark and Source Indicator for Applicant's goods.

g. Since the Trademark has long been in use in color, it should be possible to register the Trademark as a color Trademark. According to TMEP § 807.14(e)(i),

“The amendment of a black-&-white special form drawing to one claiming a color(s) as a feature of the mark generally does not constitute a material alteration. If a mark is initially depicted in a black-&-white special form drawing in which no color is claimed, the drawing is presumed to contemplate the use of the mark in any color, without limitation. See, e.g., *In re Data Packaging Corp.*, 453 F.2d 1300, 1302, 172 USPQ 396, 397 (C.C.P.A. 1972). The amendment of the black-&-white drawing to one claiming a particular color as a feature of the mark is, therefore, a restriction or limitation of the applicant's rights.”

h. According to TMEP § 807.14(e)(ii),

“In general, the addition, deletion or amendment of color features in a design mark does not result in a material alteration of the mark.

i. The main verbal elements have more weight than the colors in providing easy public recognition of a Trademark, so the same verbal elements in the same placement, with the same black color, just different background colors, do not hinder the public recognition of the Trademark. If it is clear that the Trademark is still basically the same Trademark, there should be no problem in registering a color version.

As explained in the REQUEST FOR REMAND, page 3:

“The Trademark conveys a Unitary Commercial Impression. All of the elements together are the Trademark. Therefore, no search of each component is needed. The sparkles, colors and stripes, and all of the calligraphy and verbal elements, all together, create a unique commercial impression. No other Trademark has all of these things, all together.

9. In the alternative, if the TTAB is not willing to allow her to register her Trademark in the color version, which has been in use since before the original Trademark application date, as evidenced by the accompanying Specimens (see EXHIBITS L & N), Applicant can accept registration of her Trademark in black-&-white.

a. As to Specimens, a Trademark submitted in black-&-white does not have to be used in black-&-white only. Therefore, the use of the Trademark in color, on the accompanying Specimens, does not invalidate the

Specimens, even for a black-&-white Trademark.

b. Since a black-&-white Trademark, according to TMEP § 807.14(e)(i) as quoted hereinabove, CAN be used in color “without limitation”, the Specimens can show the Trademark in colors, even for application to register the Trademark as a black-&-white Trademark. Applying for registration of a Trademark in black-&-white simply takes off the limitation of colors to one set of colors, giving the Applicant more leeway to use varying colors in use of the Trademark in commerce.

c. Therefore, even a black-&-white Trademark should be able to be depicted, in use, with varying colors on the supporting Specimens, without any justifiable complaint.

10. The Specimens clearly show that the Trademark is a Unitary mark, which in its Entirety does convey a unique, easily recognizable, Unitary Commercial Impression, within the meaning of TMEP §

1213.05, and therefore can, in its Entirety, serve as a source Indicator for Applicant’s goods. The whole is more than the sum of its components. Even from a distance, the entire Trademark, bounded by a black box, with all of its components together, is recognizable and distinct. According to TMEP § 1213.05,

“A mark or portion of a mark is considered “unitary” when it creates a commercial impression separate and apart from any unregistrable component. ... If the matter that comprises the mark or relevant portion of the mark is unitary, no disclaimer of an element, whether descriptive, generic or otherwise, is required.”

This Trademark conveys a Unitary Commercial Impression. Therefore, no search of each component is needed. In the color version, the sparkles, colors and stripes, and all of the calligraphy and verbal elements, all together, create a unique and unitary Commercial Impression. No other Trademark has all of these things, all together. Therefore, this Trademark should be easy to process and approve.

11. Applicant is submitting three Specimens which show the use of the Trademark in commerce, functioning as Trademarks and Source Indicators for Applicant’s goods, distinguishing them from the goods of others. The

Trademarks which appear on these are all in color: 1) In colors, but with black-and-white elements as originally; and 2) In colors, but with minor typos listed hereinabove corrected. Both versions of the Trademarks display the same overall Commercial Impression, and are clearly the same Trademark in regard to public recognition, and both serve as Source Indicators for Applicant’s goods, which distinguish her goods from those of others.

Two of the Specimens are copyright-dated before the date of the original Trademark application, and one of the Specimens is copyright-dated in 2004, if needed for confirmation of Acquired Distinctiveness.

12. Applicant is submitting four Drawing Pages which accompany this BRIEF (see EXHIBIT D). These include: Drawing 01 (black-&-white, same elements and design as originally submitted); Drawing 02 (black-&-white, with minor typos corrected); Drawing 03 (in colors, but with same calligraphy, verbal elements and design as originally submitted); Drawing 04 (in colors, but with minor typos corrected). Drawing 04 is preferred by Applicant, but it should be clear, from reviewing them, that all of them recognizably portray the same Trademark.

13. The Specimens submitted by Applicant clearly show that the Trademarks are in use as Trademarks, and do function as Source Indicators for Source of Applicants goods, to distinguish them from the goods of others. The use of the Trademarks on these leaflets clearly show that the Trademark does function as a Trademark and Source Indicator on the Specimens, in full accord with the provisions of TMEP § 904.07(b). The Trademark is an expressly-stated Source Indicator for Applicant's goods. This is sparkingly, crystal clear to anyone of normal, bright intelligence.

In accord with TMEP § 904.07(b), a Trademark meets this requirement if: "(1) it identifies the goods/services of the applicant and distinguishes them from the goods/services of others; and (2) it indicates the source of those goods/services." This Trademark clearly succeeds at both.

The Examining Attorney stated, on page 2 of her Final Office Action, that consumers are unlikely to view the entire Trademark as a Trademark. However, the entire Trademark is bounded by a black box, with a unique design and an overall commercial impression, and the whole thing is referred to in the paragraph below the Trademark, as a Trademark. So consumers can and DO view the entire Trademark as a Trademark. The entire Trademark is inescapably, unavoidably a Unitary Trademark, within the meaning of TMEP § 1213.05.

It is inescapably, crystal clear that the Trademark is perceived by the public as a Trademark to identify the Trademark with the source of the goods.

Please review the back pages of the accompanying Specimens, and EXHIBITS K, M and G. These extra EXHIBITS are included, because someone on the USPTO staff has apparently maladjusted the controls on their equipment to make Applicant's Specimens filed in support of her RESPONSE TO OFFICE ACTION completely illegible, even the large, clear 18-point type. Why? The Specimen images, and the text on them, were crisp and clear as filed. The Examining Attorney may have been hampered by this mishandling of the Applicant's documents, and she may not have been able to clearly read the leaflets.

However, the Examining Attorney and TTAB Judges need to be able to read the words on the Specimens, especially the back pages of the Specimens. So to be sure the TTAB Judges can read them, EXHIBITS K, M and G are hereby included to show the text which appears on these Specimens in large, bold type.

The text under the Trademarks, on the back page (page 4) of the Specimen leaflets, say plainly:

“Be sure to look for this unique Shimmering Rainforest Trademark, above, to assure you that you have publications & products with the genuine, original Shimmering Rainforest Characters, rather than knock-offs or plagiarized versions of them! This beautiful family of characters appears in leaflets, booklets, books and a wide variety of popular publications, to delight you, entertain you, inform you, and inspire you! We are happy to have the privilege of serving you! May God bless you and peace be with you! Om Shanthi, Om Peace! -- Prema Jyothi Light”.

THIS COULD NOT BE CLEARER. The entire Trademark is bounded by a black box. It has a beautifully distinctive Unitary Impression, and it is undeniably functioning as a Trademark. There can be absolutely no doubt about this. No member of the public could avoid seeing this Trademark as a Trademark, and as a Source Indicator for Applicant’s goods, as this is spelled out for them on the back cover where Trademarks customarily reside.

Applicant’s Specimens show the Trademark, In Use, on the back cover of the publications, with a welcoming explanatory message to the consumers of Applicant’s goods. This is in harmony with time-honored publishing traditions in the usage of Trademarks on publications. Thousands of publishers place their Trademarks on the back covers of their publications. Consumers know to look for Trademarks there, and they do view what they see there as a Trademark, especially if this is clearly pointed out to them by the publisher.

The entire Trademark does clearly function as a Trademark, with a Unitary Commercial Impression, unique, fanciful, and easily recognizable, and as an expressly-stated Source Indicator for Applicant’s goods.

It is impossible to miss this -- it is inescapably crystal clear.

14. There has been some flagrant mishandling of Applicant’s documents and images by USPTO staff, in uploading her documents and images onto TSDR. This is in need of prompt correction because this may have affected the ability of the Examining Attorney and TTAB judges to properly evaluate her case. This is described on pages 10-12 of the REQUEST FOR REMAND filed 03-28-13, incorporated herein by reference. This issue was not addressed in the TTAB Order dated 04-05-13. Yet it involves a serious breach of trust on the job.

Applicant Light got in touch with Teresa Stanek Rea, Director of the United States Patent & Trademark Office and Undersecretary of Commerce for Intellectual Property, and Deborah Cohn, Commissioner of Trademarks, asking for high-level assistance in resolving this serious problem. (Please see page 1 of this BRIEF).

This bad handling is apparently a deliberate attempt by someone on the support staff to “throw the case” by making Applicant’s beautifully and carefully done case documents look weirdly formatted, way over-exposed, completely illegible, and hard to read. This includes: a) maladjusting the exposure on the word documents so that the type appears light, broken up and almost unreadable; b) maladjusting the exposure on the images for the “Vanavasitos” Specimen so that the color is off, the images look blurred, and even large, clear type looks blurred, fuzzy and completely illegible; c) uploading the REQUEST FOR REINSTATEMENT twice on 02-05-13 (though Applicant only sent it once), and d) weirdly re-aligning the pages on the first uploading, chopping pages in half vertically, then the sides of the pages swapped so that the pages were made unreadable (please see this in TSDR); e) then the second uploading with the pages more normal, but over-exposed so that the type breaks up and is hard to read. Why leave both “conversions” online? Someone went to a lot of trouble to tamper with the documents, a breach of trust. Who did this? This should be identifiable.

The documents and images, as sent by Applicant, are crisp, readable, with perfect color, and prepared with great care. Nothing was fuzzy, skewed, blurred or illegible. Yet even her earlier color Specimens were badly reproduced by USPTO staff for online viewing in black-&-white. This is seriously in need of correction.

15. The USPTO earlier claim of “multiple marks”, as a possible barrier to registration of these Trademarks, has been withdrawn. The remaining issue of “whether the Trademark functions as a Trademark, and as a Source Indicator for Applicant’s goods”, with unitary and distinctive commercial impression, has been resolved by the clear usage of Applicant’s Trademarks as Trademarks, as evidenced by her Specimens. Therefore, there are no real, substantial or valid remaining barriers to registration of these Trademarks.

When these cases originally came before the TTAB on appeal, the case was being handled by Examining Attorney Paul Gast. Mainly he deemed the Trademarks to be “multiple marks”, rather than single Trademarks. However, this objection was withdrawn by Examining Attorney Linda Lavache, in her Office Action dated 05-26-12:

“In short, to the extent applicant maintains that the rectangle and all of the wording within it is a single mark and that it is used in commerce all together in the manner shown on the drawing, it is accepted that applicant

has applied for this matter as a single mark. Therefore, the refusal on the basis that applicant has applied for multiple marks is withdrawn.” So, this no longer stands as a barrier to registration.

Also, the Examining Attorney has referred to the terms in the finer print of this Trademark are “fanciful”, (see page 4 of the Final Office Action, where the Examining Attorney objects to correction of typographical errors as “changing the spelling of fanciful terms”.) The TTAB, in its Order dated 04-05-13, requested that new Briefs be filed for this Appeal, based solely on Examining Attorney LaVache’s Final Office Action dated 03-09-13.

The remaining issue of “whether the Trademark functions as a Trademark, and as a Source Indicator for Applicant’s goods”, with unitary and distinctive commercial impression, has been well-resolved by the clear usage of Applicant’s Trademarks as evidenced by her Specimens, which clearly show the Trademarks in use as Trademarks, which clearly serve as Source Indicators for Applicant’s goods, distinguishing them from the goods of others. Therefore, there are no real, substantial or valid remaining barriers to registration of these Trademarks, on the Principal Register. Registration – with or without the requested correction of typographical errors, although these are sincerely requested, in color or in black-&-white without limitation as to use of color -- should therefore be granted to these Trademarks.

16. Applicant has steadfastly maintained, throughout all these twelve long years that her applications for Trademark registration have been pending in the USPTO, that these Trademarks are inherently registrable. However, in the alternative, she states that her Trademarks have also Acquired Distinctiveness, as they have been in her continuous and exclusive use for way more than the requisite number of years for a U.S.C. §1052(f) claim, as evidenced by the accompanying Specimens. (See EXHIBIT N, and the Declaration of Use in her RESPONSE TO OFFICE ACTION dated 01-28-13). However, she made this U.S.C. §1052(f) claim, in the alternative, much earlier in the case, in 2009. As the case now stands, the 2(b) claim should no longer be at all necessary, as the only real question which remains as a possible barrier to registration, in Examining Attorney LaVache’s Final Office Action dated 03-09-13, and as stated hereinabove, is whether the Trademark is used as a Trademark and serves as a Source Indicator to distinguish Applicant’s goods from those of others. This issue is beautifully resolved by the accompanying Specimens. Applicant Light hereby requests that registration be granted to these very, VERY long-standing Trademark applications, without the need to rely upon a U.S.C. §1052(f) claim.

17. Applicant Light also requests that the TTAB rule upon the issue of violation of Petition Fee

requirements by the Petitions Office, who required \$200 from Petitioner Light for a single Petition to Revive

her Trademarks. The final clicks of the filing for the RESPONSE TO OFFICE ACTION dated 01-28-13 slid a few minutes past midnight on the deadline date on the East Coast, although they were submitted on the proper day in Colorado. The single three-page Petition To Revive covered both Trademarks. The Petitions Office seems to have required an unlawfully doubled fee, in excess of the single \$100 fee required by 37 C.F.R. § 2.6, (a)(15).

The issue of whether two Trademarks can be addressed by a single Petition is not currently addressed anywhere in the TMEP or federal law, so a ruling by the TTAB is requested on this issue, for the benefit of the larger public. Current laws and the TMEP provide that a fee should be paid per Petition, not per Trademark. There is no provision in the TMEP or federal law for charging \$200 for a single Petition, and there is no proscription or prohibition in the TMEP or federal law for submitting a single Petition for two Trademarks. Neither the Petitions Office, nor the Trademark Policies & Procedures Office, have adequately justified their arbitrary decision to levy fees amounting to \$200 for a single three-page PETITION TO REVIVE, filed on 01-28-13, for two Trademarks, which were rejected on the same date for the same reason.

(Please see the Record for the PETITION TO REVIVE, NOTICE OF REVIVAL for just one Trademark only (SHIMMERING BALLERINAS), REQUEST FOR REINSTATEMENT to ask that the other Trademark be revived also, NOTICE OF DEFICIENCY LETTER refusing, and RESPONSE TO NOTICE OF DEFICIENCY in which Applicant paid the added Fee pending TTAB review upon Appeal.)

Attached as EXHIBIT C is an email received from Deborah Blocker, Paralegal Assistant for the Office of Petitions, received 02-07-13, after Applicant filed a formal REQUEST FOR REINSTATEMENT with the Petitions Office, to try to straighten out the problem of this Trademark not being revived, when the Petition to Revive it had been timely filed, accompanied by the Petition Fee. The email from Ms. Blocker was accompanied by a 2-page letter, which is included in EXHIBIT C. Ms. Blocker's letter said that the Petition was deemed incomplete because it did not include the \$100 Petition Fee, but the \$100 Petition Fee was paid. Her letter said "you submitted two Petition to Revive requests", but there was just one Petition.

Applicant then went up the lines of authority to Director of Trademark Policies & Procedures Cynthia Lynch, who was directly queried by email by Applicant Light on 02-13-2013 on this issue (EXHIBIT D). In response, Ms.

Lynch had Montia Givens Pressey, Staff Attorney, Office of the Commissioner for Trademarks, write a letter dated 02-27-13 (EXHIBIT E), insisting on the questionable extra \$100, without addressing Applicant's concerns.

A ruling by the TTAB is now requested on this issue, for the benefit of the larger public. (If the doubled fee for a single Petition is deemed to have been charged in error, a refund should be issued to Applicant pursuant to 37 C.F.R. § 2.209(a). She would have to be contacted first, as she no longer has the card upon which the extra charge was made).

18. These Trademark applications have been pending within the USPTO for twelve (12) years, which makes them very, very, VERY long-standing cases. After putting Applicant Light through hoops for all these years, during which despite experiencing car accidents in which she nearly died, resulting in serious injuries and surgeries, and despite all difficulties, including death threats from violent neighbors intent upon plagiarizing all of her creative works for wrongful monetary gain on their part, she has steadfastly and bravely kept up with the required stream of ping-pong responsive papers, as a struggling *pro se* litigant, through thick and thin. The least the TTAB could do for her, would be to at least, and at long last, grant registration to her very distinctive and beautiful, long-standing and long-in-use, Trademarks. Twelve years is a very, very, VERY long time for a pending Trademark application, and her Trademarks have been in use the entire time. Applicant is sincerely hoping that her Trademarks will finally, at long last, after twelve long years, be granted registration.

VIII. SUMMARY, CONCLUSIONS & RELIEF SOUGHT

After a long, difficult, 12-year odyssey, no real barriers remain to registration of both of these Trademarks on the Principal Register. Therefore, Applicant Light respectfully requests that registration be hereby granted to both Trademarks. Both Trademarks clearly do function as Trademarks, and as Source Indicators for Applicant's goods. Both Trademarks clearly do have a clear, unique, unitary commercial impression.

This is totally, inescapably, sparkingly crystal clear.

Some of Applicant's requests for correction of typographical errors should be easily grantable. These Trademarks are not Sound Marks. These are Visual Marks. If the Examining Attorney can correct the FORTY-TWO (42) typographical errors made by USPTO typists, on these two little Trademarks combined, then some of the typographical errors made by Applicant's typists should be understandably correctible also.

It should be permissible to portray the Trademark in color, “without limitation”, without this being considered a material alteration of the Trademark. Anyone can plainly see that the black-&-white version of the Trademark has the same basic elements and placement of those elements, as the color version. The calligraphy and large words are the same. The overall “flag design” is the same. In usual practice, there should be no problem with allowing a color version of the same Trademark.

Any normally intelligent person can easily see that they are basically the same Trademark – just that one is black-&-white, and one is in color. If the Trademarks have been in use in color, they should be registrable in color, even if originally submitted in black-&-white. However, if this is not possible, Applicant Light is also willing to accept registration of her Trademarks in black-&-white (this would be her second choice).

It would be only fair, after putting the humbly-circumstanced, *pro se*, non-attorney Applicant, who was injured in car crashes, through over twelve years of responsive pleadings, to allow these two Trademarks to receive registration, especially since these beautiful Trademarks have been in use for the entire time, as well as before that time. It is amazing that she is still alive, and has survived all of these years of controversy, and she is still steadfastly and sincerely requesting, and hoping for, registration of her humble Trademarks.

The creative works which she has been doing are altruistic, and for the benefit of humanity in general, and beautiful little children in particular, as well as for the benefit of animals and wildlife in need of protection, and the protection of the rainforest environments which may hold the keys to future medical cures.

She has survived two near-fatal auto accidents, with painful ordeals of recovery, with sunny optimism and cheerful hope. She has even survived personal threats and the wreckage of her car by persons who are so intent upon stealing storybook characters that they have threatened her life in order to keep their hold on those of her characters which they have stolen.

This situation is in need of peaceful -- and completely legal -- protest, in a court of law, at some time in the future, here in the blessed United States of America. Applicant Light, as a longtime, faithful disciple of the very beautiful Sri Swami Satchidanandaji Maharaj, is committed to totally peaceful *ahimsa* (non-violence), in the resolution of any such disputes. Fairness and honesty in creative work contributes to the flowering of peace on our planet. May such beauty prevail in all creative undertakings and projects. Nothing is truly gained by anyone, in

stealing someone else's creative works. We are all in the presence of the great and glorious God at all times, and should honor the divine in one another. If we can all do this, surely peace on earth will be very near, for all of us.

WHEREFORE, Applicant respectfully requests:

- 1) That the TTAB require USPTO staff to correct misrepresentation of the Trademark online, including misspellings of dozens of the verbal elements, running all of these together in a single big blob, and inaccurate design codes, and causing her crisp, clear document & image filings to be portrayed as blurry, illegible, skewed, overexposed, pages chopped in half, color images uploaded as black-and-white, and multiple uploading of documents which were simply and beautifully filed just once. Honest handling of documents should be expected of all USPTO employees, without exception, all the time, for all applicants.
- 2) That the TTAB grant registration to her Trademarks, which clearly and unmistakably do function as Trademark and Source Indicators, for Applicant's goods. Applicant is hoping the Trademarks can be registered in color, with the typographical corrections requested. She holds that her Trademarks are inherently registrable, but in the alternative, that they have Acquired Distinctiveness over time. And, twelve years is a very, very, VERY long time for a Trademark application to be pending within the USPTO. Her beautiful Trademarks have been in use in commerce the whole time.
- 3) That the TTAB review the TMEP and federal laws on the Petition Fee issue described hereinabove, and issue a ruling upon this, for the benefit of the larger public.

(Note: Due to size limitations of documents filed through ESTTA, the EXHIBITS (including Specimens) will have to be filed separately from this APPEAL BRIEF. Normally, it should be possible to file them as attachments at the same time. But, since there has been repeated and severe mishandling of Applicant's documents, including claims that documents which were definitely attached, were not attached, Applicant would like to file the EXHIBITS separately, with separate confirmation-of-filing and tracking numbers, to assure their receipt. This will confirm that all of the EXHIBITS have been sent. Applicant Light will also try to confirm the clear receipt of all EXHIBITS with the Examining Attorney, by phone. Thank you all for your understanding on this).

Om Shanthi, Shanthi, Shanthi! Om Peace, Peace, Peace.

Dated: June 3, 2013

Respectfully submitted,
/ *Prema Jyothi Light* /
Prema Jyothi Light
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